

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Peter G. BRYANT 593620

DECISION OF THE VICE COMMANDANT
UNITED STATES COAST GUARD

2509

Peter G. BRYANT

This appeal has been taken in accordance with 46 U.S.C. SS7702 and 46 CFR SS5.701.

By an order dated 13 December 1989, an Administrative Law Judge of the United States Coast Guard at Miami, Florida suspended Appellant's Merchant Mariner's License outright for 3 months plus an additional suspension of 8 months remitted on 12 months probation upon finding proved the charge of misconduct supported by 4 specifications.

The 4 supporting specifications alleged that, at various times in 1988 and 1989, Appellant misrepresented his qualifications which were required in order to obtain a first class pilotage endorsement in U.S. navigable waters. A fifth specification was dismissed upon the motion of the Investigating Officer. The incidents occurred at Coast Guard Regional Examination Centers (RECs) in Miami, Florida; Houston, Texas; and New Orleans, Louisiana.

The hearing was held at Miami, Florida on 31 October 1989. Appellant appeared and elected to advance his defense pro se after being fully advised of his right to professional counsel. Appellant submitted an answer of "no contest" to the charge and specifications. Appellant filed no motions or objections. Upon the motion of the Investigating Officer, the Administrative Law Judge dismissed specification 2 of the charge. Accordingly, the Administrative Law Judge found the remaining charge and specifications proved without the presentation of evidence by the Investigating Officer as permitted by 46 C.F.R. +5.527.

The Administrative Law Judge issued his written Decision and Order on 13 December 1989. Appellant timely filed a simultaneous pro se notice of appeal and supporting brief with the Commandant on 1 December 1989. Accordingly this matter is considered to be properly before the Vice Commandant for disposition.

FINDINGS OF FACT

Appellant, at all times relevant was acting under the authority of the above-captioned license pursuant to 46 C.F.R. +5.57(b) authorizing him to serve as a master of freight and towing vessels not more than 1,000 gross tons upon oceans, not more than 200 miles offshore.

On 7 June 1988, at the Coast Guard REC, Miami, Florida, Appellant misrepresented the number of round trips he was required to make in order to obtain a first class pilot endorsement to his license for the St. John's River, Florida.

On 11 October 1988, at the Coast Guard REC, Houston, Texas, Appellant misrepresented the number of round trips he was required to make in order to obtain a first class pilot endorsement to his license for the Corpus Christi Ship Channel.

On 19 December 1988, at the Coast Guard REC, New Orleans, Louisiana, Appellant misrepresented the number of round trips he was required to make in order to obtain a first class pilot endorsement to his license for Mobile Bay, Alabama.

On 31 July 1989, at the Coast Guard REC, Houston, Texas, Appellant misrepresented the number of round trips he was required to make in order to obtain a first class pilot endorsement to his license for Sabine Bar and Main Ship Pass, Port Arthur Texas.

BASES OF APPEAL

This appeal has been taken from the order of the Administrative Law Judge dated 13 December 1989. Appellant asserts in his appeal that the finding of proved to specification 4 of the charge of misconduct is not supported by sufficient evidence.

OPINION

Appellant asserts that specification 4 of the charge of misconduct, which alleges misrepresentation of the number of round trips at the Coast Guard REC, Houston, Texas on 31 July 1989, was based on erroneous information submitted by the Investigating Officer and admitted into evidence.

Appellant's assertions are not properly raised on appeal. At the hearing, Appellant raised no objection to the charge and specification. Appellant was fully advised of his procedural due process rights. [TR pp 4-12]. Additionally, Appellant was advised that by pleading "no contest" the Administrative Law Judge could find the charge and specifications proved without further evidence. [TR p 12]. In accordance with the provisions of 46 C.F.R. +5.527(c), the Administrative Law Judge was correct in finding proved the charge and specifications without further evidence after the plea of "no contest." The record reflects that Appellant's plea was providently made.

All non-jurisdictional defects and defenses such as those raised by Appellant are waived by his provident pleas at the hearing. Appeal Decision 2462 (ARMSTEAD); Appeal Decision 2385 (CAIN), aff'd sub nom. Commandant v. Cain, NTSB Order EM-125 (1985); Appeal Decision 2376 (FRANK); Appeal Decision 2362 (ARNOLD); Appeal Decision 2268 (HANKINS); Appeal Decision 1203 (DODD); Appeal Decision 2480

(LETT); Appeal Decision 2481 (CROWLEY). Title 46 C.F.R. +5.701(b) provides that the only matters which will be considered on appeal are (1) rulings on motions or objections which were not waived at the hearing; (2) clear error; and (3) jurisdictional questions. The record of the proceedings reflects no clear errors, jurisdictional questions or novel policy matters.

The assertions made by Appellant present issues which could have been raised at the hearing through a timely motion or objection. Having been afforded every opportunity by the Administrative Law Judge to raise these issues at the hearing, Appellant effectively waived these matters and is now precluded from raising them on appeal.

CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative nature. The hearing was conducted in accordance with the requirements of applicable law and regulations.

ORDER

The decision and order of the Administrative Law Judge dated on 13 December 1989 at Miami, Florida is AFFIRMED.

MARTIN H. DANIELL
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington D.C., this 6th day of September 1990.

***** END OF DECISION NO. 2509 *****